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Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

BRIEF OF AMICI CURIAE ON BEHALF OF THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA AND THE SAILORS' UNION OF THE PACIFIC

RICHARD M. CANTOR,
Counsel for Amici Curiae.

GEORGE HALPERN,
of Counsel.

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THE ROYAL NORWEGIAN GOVERNMENT FILED A BRIEF IN WHICH IT REFERRED TO 7,000 NORWEGIAN SEAMEN SIGNING ON IN AMERICAN PORTS IN EACH YEAR. THIS BRIEF WAS WITHDRAWN, AFTER THIS ONE WAS PRINTED. THE NEW BRIEF, THEREAFTER FILED WITH THIS COURT CONTAINS NO SUCH REFERENCE.

IT IS RESPECTFULLY SUBMITTED THAT OUR REFERENCE TO THE "7,000 NORWEGIAN SEAMEN" IS BASED UPON SUCH ORIGINAL BRIEF SERVED UPON PLAINTIFF-RESPONDENT.

Dated: October 3, 1952

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

BRIEF OF THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA AND THE SAILORS' UNION OF THE PACIFIC, AMICI CURIAE, IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Statement

The seventy thousand American seamen represented by the Seafarers International Union of North America and the Sailors' Union of the Pacific will be seriously affected by the action of this Court upon this application.

They respectfully submit that the preservation of the Merchant Marine of the United States of America, so vitally important to the economy and national defense of this country, and the seamen dependent on it, require that our laws and public policy be impartially and equally applied to all vessels and seamen engaging in carrying its foreign commerce, and employing our ports and facilities toward that end.

Permitting the "law of the flag" to govern in all respects the activities of foreign vessels and foreign seamen, in

our ports, and operating in our trade, would be an act of discrimination against our own Merchant Marine and our seamen. It is both conceded and implicit in the argument favoring review, that the economic standards imposed by foreign law are lower than ours. Thus, foreign vessels have a competitive advantage. The ruling of the Court below affords the American Merchant Marine no discriminatory advantage. It merely imposes equal obligations upon all who do business here.

Petitioner and the intervening Governments are seeking a favored position, to the detriment of our own interests.

Such a double standard for foreign and American interests within our jurisdiction, can result only in the deterioration of our Merchant Marine, the distress of our seamen and injury to our economy. Our Merchant Marine is being steadily whittled away by the encroachment of foreign shipowners, employing vessels purchased in a great percentage of cases, from our own Government, at ridiculously low prices, and labor hired at a far lower scale.

Large organizations of foreign seamen have set up permanent headquarters in our principal ports. Here they maintain regular hiring halls, and furnish a constant pool or supply of labor to foreign operated ships, such as the one in the case at bar. Reference is respectfully made to the brief of the Royal Norwegian Government. On page "3" it is stated that this one nation signs on about 7,000 Norwegians every year in the United States.

During the last war, the Seafarers International Union of North America and the Sailors' Union of the Pacific lost a great many of its members as casualties, both dead and injured, in the defense of our country. American seamen responded quickly and without hesitation to the call in time of national crisis. It will be difficult to furnish the necessary manpower in timely fashion in the future, unless our merchant marine is preserved against discriminatory foreign competition. Our foreign "friends" of today may be neutral or ranged against us in the conflict of tomorrow.

The United States of America can rely upon no other merchant marine, but its very own.

It cannot be too strongly urged that acceptance of this matter for review would give undue weight to the discredited doctrine of extraterritorial privilege, implicit in the application of foreign law to foreign nationals using our ports for the purpose of competing in our commerce.

As set forth in the brief of the plaintiff-respondent, this Court has long since repudiated the principle of the "law of the flag". It has applied the "law of the forum" to instances of lesser importance to our public welfare.

The clarity of the decision below; its harmony with the principles enunciated by this Court; its fairness, and the fact that petitioner and his supporters are seeking a favored and discriminatory position in our economic life, all combine to plead that no action is required by this Court.

Argument

1. The rights of seamen cannot, in the light of the progress of law, be governed by ancient Hanseatic principles.

Despite attempts to cling to the old rules, and the encroachments of the common law and principles of Workmen's Compensation, the law of Admiralty in this country merged these conflicting rules by the blending of ancient admiralty principles with modern concepts of jurisprudence, which enlarged and extended the rights of seamen.

It would be wrong to circumvent and deny the relief flowing from such rights by resurrecting the outmoded jurisdictional rule of the "law of the flag" in instances such as this one.

The Jones Act was the culmination of a developing trend for the protection of seamen.

This Act is broad in scope, affording protection to any seaman injured in the course of his employment. It includes aliens as well as citizens. All who submit themselves

to the jurisdiction of American ports are governed by its terms.

There are no principles of international comity to which all nations subscribe. The very term "law of the flag" indicates the sovereign right of each nation to legislate within its jurisdiction. . . .

There is no sanction for imposing foreign law in the forum of another nation.

Such a concept has long since been repudiated. In *Patterson* v. *Bark Eudora,* 190 U. S. 169, 23 S. Ct. 821, 47 L. Ed. 1002 (1903), this Court stated the rule to be:

> "It is undoubtedly true that for *some* purposes a foreign ship is to be treated as foreign territory" (p. 176). (Emphasis ours.)

And then went on to say:

> "Yet when a foreign merchant vessel comes into our ports, like a foreign citizen coming into our territory, it subjects itself to the jurisdiction of this country" (p. 176).

On page 178, the Court said:

> "The implied consent of this Government to leave jurisdiction over the internal affairs of foreign merchant vessels in our harbors to the nations to which these vessels belong, may be withdrawn."

And on page 179:

> "We are of the opinion that it is within the power of Congress to protect *all sailors shipping in our ports* on vessels engaged in foreign or interstate commerce, whether they belong to citizens of this country or a foreign nation and that *our Courts are bound to enforce those provisions in respect to foreign equally with domestic vessels.*" (Emphasis ours.)

Reference is respectfully made to plaintiff-respondent's brief for other rulings of this Court on the subject.

Incidentally, the availability of more than one remedy or more than one forum does not constitute a threat of double recovery.

2. Public welfare and public policy require that the ruling in the Court below be sustained.

The matter herein does not concern an isolated foreign seaman who signed on a foreign vessel just casually touching our ports.

It does concern foreign vessels constituting more than 40% of the total of all vessels using our ports.

No elaborate and detailed statistics are required to illustrate the large number of foreign flag vessels, which are regularly engaged in our commerce, rarely calling at their nominal home ports.

Nor can there be any doubt as to the large number of foreign seamen who are maintained in American ports for the purpose of being held available to serve on such foreign vessels.

That such vessels enjoy a distinct competitive advantage over the American cannot be denied. And the petitioner herein leaves little doubt that the standards set by foreign laws and unions do not meet those of this country.

To permit such inequality, favoring foreign vessels competing with American vessels in American ports, results in discrimination against the latter.

No plea is made for the exclusion of foreign vessels nor for any advantage to those of America.

The decision below merely establishes the principle of equality of law to all who enter this jurisdiction.

3. The application of American law to all within our jurisdiction does not constitute a subsidy, direct or indirect.

However, no apology is made for the policy of subsidies. Historically that is our policy. We have granted subsidies to our Merchant Marine and other means of transportation, and we still do. This policy we share with other great nations, for the very same reasons which are both military

and commercial. It is in the national interest to foster and preserve our Merchant Marine. The granting of subsidies is merely an aspect of that important over-shadowing policy.

Congress has criticized the payment of subsidies only to the extent that they were granted in the guise of payment for services. But such criticism was directed against the improper labelling of what actually was a subsidy grant. The subsidies remained. Only the nomenclature was changed. This policy remains unaltered.

Placing foreign shipowners on a parity with domestic ones cannot be considered as a subsidy to the latter.

On the contrary, should petitioner prevail, then foreign vessels would be placed in a more favorable position at the expense of the economy of this country.

Nor can equality under the law be considered a device to reduce the tax burden of the American citizen, unless it be deemed that a prosperous Merchant Marine would contribute a larger share of the tax dollar.

On the other hand, petitioner should not expect the American taxpayer to foot the bill for the unfair and discriminatory advantage of the foreign shipowner.

Foreign shipowners who earn profitable dollars in doing business in the United States should have no cause to complain if the cost of doing such business must likewise be measured in dollars.

4. The matter of shipping articles is of grave concern to American seamen.

It has been our judicial and legislative policy to require articles to be fair, complete and without ambiguity. Any trace of advantage to a shipowner therein, without a corresponding advantage to a seaman, renders such articles void.

To presume, as does petitioner, that articles entered into in the United States, should be governed by foreign law, is repugnant to our public policy and contrary to elementary rules of contract.

The articles used by petitioner were purposefully vague in order to hide the real scope of the voyage and the design or plot underlying the entire operation. Because they are vague and do not define the exact scope of the voyage, they are void and not binding on the seamen, allegedly parties thereto.

On the face of the articles in the record, it is clear that the subject vessel sailed from and returned to New York.

Nevertheless, petitioner argues that since the articles were indefinite and did not specifically state the scope of the voyage, the actual return of the vessel, and plaintiff-respondent's right to expect such return, were of no effect in determining whether this was a voyage from and to New York. Should self-serving and tricky contractual language be permitted to conceal and deny actual facts?

Just as foreign vessels must subscribe to American safety and other standards while in our ports, so must they accept the same standards of law for the protection of seamen hired in our ports.

CONCLUSION

The decision of the Court below clearly establishes the obligations and responsibility of all who use our ports. It is not in conflict with any other federal cases. It is in keeping with our public policy. It promotes our national welfare.

Certiorari should be denied.

Respectfully submitted,

RICHARD M. CANTOR,
Counsel for the Seafarers International Union of North America and Sailors' Union of the Pacific.

GEORGE HALPERN,
of Counsel.

October 6, 1952.